



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 02B of 09

The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 **SECTION 98.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
2 amended to read:

3 48.357 **(2v)** (c) If the court finds under par. (a) 3. that any of the circumstances
4 ~~specified in under~~ s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court
5 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding
6 to determine the permanency plan for the child. ~~If a hearing is held under this~~
7 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
8 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

9 **SECTION 99.** 48.357 (2v) (c) 2. of the statutes is repealed.

10 **SECTION 100.** 48.357 (2v) (c) 3. of the statutes is repealed.

11 **SECTION 101.** 48.363 (1) (a) of the statutes is amended to read:

12 48.363 **(1)** (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian
13 custodian, an expectant mother, an unborn child by the unborn child's guardian ad
14 litem, any person or agency bound by a dispositional order, or the district attorney
15 or corporation counsel in the county in which the dispositional order was entered
16 may request a revision in the order that does not involve a change in placement,
17 including a revision with respect to the amount of child support to be paid by a
18 parent, ~~or the.~~ The court may ~~on its own motion~~ also propose such a revision. The
19 request or court proposal shall set forth in detail the nature of the proposed revision
20 and what new information is available that affects the advisability of the court's
21 disposition. The request or court proposal shall be submitted to the court. The court
22 shall hold a hearing on the matter prior to any revision of the dispositional order if
23 the request or court proposal indicates that new information is available which
24 affects the advisability of the court's dispositional order, unless written waivers of

1 objections to the revision are signed by all parties entitled to receive notice and the
2 court approves.

3 **SECTION 102.** 48.363 (1) (b) of the statutes is amended to read:

4 48.363 **(1)** (b) If a hearing is held, at least 3 days before the hearing the court
5 shall notify the child, the child's parent, guardian, and legal custodian, all parties
6 bound by the dispositional order, the child's foster parent, treatment foster parent,
7 or other physical custodian described in s. 48.62 (2), the child's court-appointed
8 special advocate, the district attorney or corporation counsel in the county in which
9 the dispositional order was entered, and, if the child is an Indian child, the Indian
10 child's Indian custodian and tribe. If the child is the expectant mother of an unborn
11 child under s. 48.133, the court shall also notify the unborn child by the unborn
12 child's guardian ad litem; ~~or. If the proceeding involves an adult expectant mother~~
13 ~~of an unborn child under s. 48.133, the court shall notify the adult expectant mother,~~
14 the unborn child through the unborn child's guardian ad litem, all parties bound by
15 the dispositional order, and the district attorney or corporation counsel in the county
16 in which the dispositional order was entered, at least 3 days prior to the hearing. A
17 copy of the request or proposal shall be attached to the notice. If all parties consent,
18 the court may proceed immediately with the hearing. No revision may extend the
19 effective period of the original order.

20 **SECTION 103.** 48.365 (1m) of the statutes is amended to read:

21 48.365 **(1m)** The parent, child, guardian, legal custodian, Indian custodian,
22 expectant mother, unborn child by the unborn child's guardian ad litem, any person
23 or agency bound by the dispositional order, the district attorney or corporation
24 counsel in the county in which the dispositional order was entered, or the court on
25 its own motion, may request an extension of an order under s. 48.355 including an

1 order under s. 48.355 that was entered before the child was born. The request shall
2 be submitted to the court ~~which~~ that entered the order. ~~No~~ An order under s. 48.355
3 may be extended ~~except~~ only as as provided in this section.

4 **SECTION 104.** 48.365 (2) of the statutes is amended to read:

5 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~
6 provide notice of the time and place of the hearing to the child, the child's parent,
7 guardian, and legal custodian, all the parties present at the original hearing, the
8 child's foster parent, treatment foster parent or other physical custodian described
9 in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or
10 corporation counsel in the county in which the dispositional order was entered and,
11 if the child is an Indian child, the Indian child's Indian custodian and tribe. If the
12 child is an expectant mother of an unborn child under s. 48.133, the court shall also
13 notify the unborn child by the unborn child's guardian ad litem, ~~or.~~ If the extension
14 hearing involves an adult expectant mother of an unborn child under s. 48.133, the
15 court shall notify the adult expectant mother, the unborn child through the unborn
16 child's guardian ad litem, all the parties present at the original hearing, and the
17 district attorney or corporation counsel in the county in which the dispositional order
18 was entered, of the time and place of the hearing.

19 **SECTION 105.** 48.365 (2g) (b) 4. of the statutes is created to read:

20 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home,
(21) under s. 48.028 (4)(d) 2. specific information showing that active efforts have been made to prevent the
22 breakup of the Indian family and that those efforts have proved unsuccessful.

23 **SECTION 106.** 48.365 (2m) (a) 1. of the statutes is amended to read:

24 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
25 extension. If the child is placed outside of his or her home, the person or agency

under s. 48.355 (4)(d) 2.
(4)(d) 2.
(4)(d) 2.

2x

1 primarily responsible for providing services to the child shall present as evidence
2 specific information showing that the person or agency has made reasonable efforts
3 to achieve the goal of the child's permanency plan, unless return of the child to the
4 home is the goal of the permanency plan and any of the circumstances specified in
5 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home,
6 the person or agency primarily responsible for providing services to the Indian child
7 shall also present as evidence specific information showing that the person or agency
8 has made active efforts to prevent the breakup of the Indian family and that those
9 efforts have proved unsuccessful.

10 1m. The judge shall make findings of fact and conclusions of law based on the
11 evidence. The findings of fact shall include a finding as to whether reasonable efforts
12 were made by the agency primarily responsible for providing services to the child to
13 achieve the goal of the child's permanency plan, unless return of the child to the home
14 is the goal of the permanency plan and the judge finds that any of the circumstances
15 specified in under s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who
16 is placed outside the home, the findings of fact shall also include a finding as to
17 whether active efforts were made to prevent the breakup of the Indian family and
18 as to whether those efforts have proved unsuccessful. An order shall be issued under
19 s. 48.355.

20 **SECTION 107.** 48.365 (2m) (a) 3. of the statutes is amended to read:

21 48.365 **(2m)** (a) 3. The judge shall make the findings specified in under subd.
22 ~~1.~~ 1m. relating to reasonable efforts to achieve the goal of the child's permanency plan
23 and the findings ~~specified in under~~ subd. 2. on a case-by-case basis based on
24 circumstances specific to the child and shall document or reference the specific
25 information on which those findings are based in the order issued under s. 48.355.

1 An order that merely references subd. 1. 1m. or 2. without documenting or
2 referencing that specific information in the order or an amended order that
3 retroactively corrects an earlier order that does not comply with this subdivision is
4 not sufficient to comply with this subdivision.

5 **SECTION 108.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)
6 and amended to read:

7 48.365 **(2m)** (ad) If the judge finds that any of the circumstances ~~specified in~~
8 under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold
9 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to
10 determine the permanency plan for the child. ~~If a hearing is held under this~~
11 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
12 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

13 **SECTION 109.** 48.365 (2m) (ad) 2. of the statutes is repealed.

14 **SECTION 110.** 48.365 (2m) (ag) of the statutes is amended to read:

15 48.365 **(2m)** (ag) The court shall give a foster parent, treatment foster parent,
16 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
17 ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the
18 foster parent, treatment foster parent, or other physical custodian to make a written
19 or oral statement during the hearing, or to submit a written statement prior to the
20 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
21 or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing
22 under ~~par. (ad) 2. or sub. (2)~~ and an opportunity to be heard under this paragraph
23 does not become a party to the proceeding on which the hearing is held solely on the
24 basis of receiving that notice and having the opportunity to be heard.

25 **SECTION 111.** 48.38 (4) (i) of the statutes is created to read:

1 48.38 (4) (i) If the child is an Indian child, all of the following:

2 1. The name, address, and telephone number of the Indian child's Indian
3 custodian and tribe. *under s. 48.028 (4)(d) 20*

4 2. A description of the remedial services and rehabilitation programs offered
5 in an effort to prevent the breakup of the Indian family. *48.028 (7)(b)*

6 3. A statement as to whether the Indian child's placement is in compliance with
7 the order of placement preference specified in s. ~~48.345 (3m)~~ and, if the placement
8 is not in compliance with that order, an explanation for the departure from that
9 order.

10 **SECTION 112.** 48.38 (4m) of the statutes is created to read:

11 48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding
12 under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the
13 circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
14 court shall hold a hearing within 30 days after the date of that finding to determine
15 the permanency plan for the child. If a hearing is held under this paragraph, the
16 agency responsible for preparing the permanency plan shall file the permanency
17 plan with the court not less than 5 days before the date of the hearing.

18 (b) At least 10 days before the date of the hearing the court shall notify the child,
19 any parent, guardian, and legal custodian of the child, and any foster parent,
20 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the
21 child of the time, place, and purpose of the hearing. *48.028 (4)(a)*

22 (c) If the court knows or has reason to know that the child is an Indian child,
23 notice under par. (b) to the Indian child's parent shall be provided in the manner
24 specified in s. ~~48.273 (1) (ag)~~ In like manner, the court shall also notify the Indian
25 child's Indian custodian and tribe. No hearing may be held under par. (a) until at

1 least 10 days after receipt of the notice by the Indian child's parent, Indian custodian,
2 and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the
3 court shall grant a continuance of up to 20 additional days to enable the requester
4 to prepare for the hearing.

5 (d) The court shall give a foster parent, treatment foster parent, or other
6 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
7 an opportunity to be heard at the hearing by permitting the foster parent, treatment
8 foster parent, or other physical custodian to make a written or oral statement during
9 the hearing, or to submit a written statement prior to the hearing, relevant to the
10 issues to be determined at the hearing. The foster parent, treatment foster parent,
11 or other physical custodian does not become a party to the proceeding on which the
12 hearing is held solely on the basis of receiving that notice and having the opportunity
13 to be heard.

14 **SECTION 113.** 48.38 (5) (b) of the statutes is amended to read:

15 48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~
16 ~~child, if he or she is 12 years of age or older, and; the child's parent, guardian, and~~
17 ~~legal custodian;~~ the child's foster parent, the child's treatment foster parent, the
18 operator of the facility in which the child is living, or the relative with whom the child
19 is living; and, if the child is an Indian child, the Indian child's Indian custodian and
20 tribe of the date, time, and place of the review, of the issues to be determined as part
21 of the review, and of the fact that they may have an opportunity to be heard at the
22 review by submitting written comments not less than 10 working days before the
23 review or by participating at the review. The court or agency shall notify the person
24 representing the interests of the public, the child's counsel, the child's guardian ad
25 litem, and the child's court-appointed special advocate of the date of the review, of

48.028 (4)(a)

the issues to be determined as part of the review, and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

SECTION 114. 48.38 (5) (bm) of the statutes is created to read:

48.38 (5) (bm) If the child is an Indian child, notice under par. (b) to the Indian child's parent, Indian custodian, and tribe shall be provided in the manner specified in s. ~~48.273 (1) (a)~~. No review may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the review.

SECTION 115. 48.38 (5) (c) 8. of the statutes is created to read:

48.38 (5) (c) 8. If the child is an Indian child, whether active efforts were made by the agency to prevent the breakup of the Indian family and whether those efforts have proved unsuccessful.

SECTION 116. 48.38 (5) (d) of the statutes is amended to read:

48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the child's parent, guardian, and legal custodian, the person representing the interests of the public, the child's counsel, the child's guardian ad litem and, the child's court-appointed special advocate, and, if the child is an Indian child, the Indian child's Indian custodian and tribe a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad

1 litem ~~and~~, the child's court-appointed special advocate, and, if the child is an Indian
2 child, the Indian child's Indian custodian and tribe may have access to any other
3 records concerning the child for the purpose of participating in the review. A person
4 permitted access to a child's records under this paragraph may not disclose any
5 information from the records to any other person.

6 **SECTION 117.** 48.38 (5) (e) of the statutes is amended to read:

7 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
8 the determinations under par. (c) and shall provide a copy to the court that entered
9 the order; the child or the child's counsel or guardian ad litem; the person
10 representing the interests of the public; the child's parent or, guardian, or legal
11 custodian; the child's court-appointed special advocate and; the child's foster parent,
12 the child's treatment foster parent, or the operator of the facility where the child is
13 living; and, if the child is an Indian child, the Indian child's Indian custodian and
14 tribe.

15 **SECTION 118.** 48.38 (5m) (b) of the statutes is amended to read:

16 48.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
17 shall notify the child; the child's parent, guardian, and legal custodian; the child's
18 foster parent or treatment foster parent, the operator of the facility in which the child
19 is living, or the relative with whom the child is living; the child's counsel, the child's
20 guardian ad litem, and the child's court-appointed special advocate; the agency that
21 prepared the permanency plan; ~~and~~ the person representing the interests of the
22 public; and, if the child is an Indian child, the Indian child's Indian custodian and
23 tribe of the date, time, and place of the hearing.

24 **SECTION 119.** 48.38 (5m) (bm) of the statutes is created to read:

48.028 (4)(a)

1 48.38 (5m) (bm) If the child is an Indian child, notice under par. (b) to the Indian
2 child's parent, Indian custodian, and tribe shall be provided in the manner specified
3 in s. ~~48.273 (1)(a)~~. No hearing under par. (a) may be held until at least 10 days after
4 receipt of the notice by the Indian child's parent, Indian custodian, and tribe. On
5 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
6 a continuance of up to 20 additional days to enable the requester to prepare for the
7 hearing.

NOTE: Section 48.38 (5m) (c), as affected by the DHFS draft, provides that an Indian custodian and tribe do not become parties to the proceeding. Actually, 25 USC 1911 (c) grants the Indian custodian and tribe the right to intervene at any point in a proceeding involving an Indian child.

8 **SECTION 120.** 48.38 (5m) (d) of the statutes is amended to read:

9 48.38 (5m) (d) At least 5 days before the date of the hearing the agency that
10 prepared the permanency plan shall provide a copy of the permanency plan and any
11 written comments submitted under par. (c) to the court, to the child's parent,
12 guardian, and legal custodian, to the person representing the interests of the public,
13 to the child's counsel or guardian ad litem, and to the child's court-appointed special
14 advocate, and, if the child is an Indian child, to the Indian child's Indian custodian
15 and tribe. Notwithstanding s. 48.78 (2) (a), the person representing the interests of
16 the public, the child's counsel or guardian ad litem, and the child's court-appointed
17 special advocate, and, if the child is an Indian child, the Indian child's Indian
18 custodian and tribe may have access to any other records concerning the child for the
19 purpose of participating in the review. A person permitted access to a child's records
20 under this paragraph may not disclose any information from the records to any other
21 person.

22 **SECTION 121.** 48.38 (5m) (e) of the statutes is amended to read:

1 48.38 (5m) (e) After the hearing, the court shall make written findings of fact
2 and conclusions of law relating to the determinations under sub. (5) (c) and shall
3 provide a copy of those findings of fact and conclusions of law to the child; the child's
4 parent, guardian, and legal custodian; the child's foster parent or treatment foster
5 parent, the operator of the facility in which the child is living, or the relative with
6 whom the child is living; the child's court-appointed special advocate; the agency
7 that prepared the permanency plan; and the person representing the interests of the
8 public; and, if the child is an Indian child, the Indian child's Indian custodian and
9 tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case
10 basis based on circumstances specific to the child and shall document or reference
11 the specific information on which those findings are based in the findings of fact and
12 conclusions of law prepared under this paragraph. Findings of fact and conclusions
13 of law that merely reference sub. (5) (c) 7. without documenting or referencing that
14 specific information in the findings of fact and conclusions of law or amended
15 findings of fact and conclusions of law that retroactively correct earlier findings of
16 fact and conclusions of law that do not comply with this paragraph are not sufficient
17 to comply with this paragraph.

Under s. 48.029 (4)(2) 20

18 **SECTION 122.** 48.38 (6) (cm) of the statutes is created to read:

19 48.38 (6) (cm) Standards for active efforts to prevent the breakup of an Indian
20 child's family.

21 **SECTION 123.** 48.41 (2) (e) of the statutes is created to read:

22 48.41 (2) (e) In the case of an Indian child, the consent is ~~executed in writing~~
23 ~~recorded before the judge, and accompanied by a written certification by the judge~~
24 ~~that the terms and consequences of the consent were fully explained in detail to and~~
25 ~~were fully understood by the parent. The judge shall also certify that the parent fully~~

Given as provided in s. 48.028 (5) (b)

1 ~~understood the explanation in English or that the explanation was interpreted into~~
2 ~~a language that the parent understood. Any consent given under this paragraph~~
3 ~~prior to or within 10 days after the birth of the Indian child is not valid. A parent who~~
4 ~~has executed a consent under this paragraph may withdraw the consent for any~~
5 ~~reason at any time prior to the entry of a final order terminating parental rights, and~~
6 ~~the Indian child shall be returned to his or her parent. After the entry of a final order~~
7 ~~terminating parental rights, a parent who has executed a consent under this~~
8 ~~paragraph may withdraw that consent as provided in s. 48.46 (2) or 48.47 (1) or (2).~~ keep

Note: 25 USC 1913 relating to voluntary TPRs refers to a parent of an Indian child, whether or not the parent is an Indian.

Also, 25 USC 1913 could be construed to permit an Indian custodian to consent to a TPR to an Indian child, but that construction could be held unconstitutional if it were to result in an Indian parent being deprived of his or her constitutional right to raise his or her child without his or her consent.

9 SECTION 124. 48.415 (2) (a) 2. a. of the statutes is amended to read:

10 48.415 (2) (a) 2. a. That the agency responsible for the care of the child and the
11 family or of the unborn child and expectant mother has made a reasonable effort to
12 provide the services ordered by the court. In this subdivision, "reasonable effort"
13 means an earnest and conscientious effort to take good faith steps to provide the
14 services ordered by the court which ~~that~~ takes into consideration the characteristics
15 of the parent or child or of the expectant mother or child, the level of cooperation of
16 the parent or expectant mother, and other relevant circumstances of the case.

17 SECTION 125. 48.415 (2) (a) 2. b. of the statutes is amended to read:

18 48.415 (2) (a) 2. b. That In the case of an Indian child, that the agency
19 responsible for the care of the child and the family or of the unborn child and
20 expectant mother has made ~~a reasonable~~ an active effort to provide the services
21 ordered by the court. In this subdivision, "active effort" means reasonable effort, as

1 defined in subd. 2. a., that also takes into consideration the prevailing social and
2 cultural characteristics and way of life of the Indian child's tribe and that involves
3 and uses the available resources of that tribe, Indian social services agencies, and
4 individual Indian caregivers.

under s. 48.028 (4)(d) 20

5 **SECTION 126.** 48.417 (2) (cm) of the statutes is created to read:

6 48.417 (2) (cm) In the case of an Indian child, the agency primarily responsible
7 for providing services to the Indian child and the family under a court order, if
8 required under s. 48.355 (2) (b) 6v. to make active efforts to prevent the breakup of
9 the Indian family, has not provided to the Indian child's family, consistent with the
10 time period in the child's permanency plan, the services necessary to prevent the
11 breakup of the Indian family.

~~NOTE: This provision is not found in the DHFS draft. This provision is parallel to
s. 48.417 (2) (c), which excuses the district attorney from filing a TPR petition if
reasonable efforts to make it possible for the child to return home have not been made.
Obviously, there is no point in filing a TPR petition with respect to an Indian child if active
efforts to prevent the breakup of the Indian family have not been made because the court
could never grant a petition in such a case.~~

12 **SECTION 127.** 48.42 (1) (d) of the statutes is amended to read:

13 48.42 (1) (d) A statement of whether the child may be subject to the federal
14 Indian child welfare act Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
15 be subject to that act, the names of the child's Indian custodian, if any, and tribe, if
16 known.

under s. 48.028 (4)(e) 1.

17 **SECTION 128.** 48.42 (1) (e) of the statutes is created to read:

18 48.42 (1) (e) If the child is an Indian child, reliable and credible information
19 showing that continued custody of the child by the child's parent or Indian custodian
20 is likely to result in serious emotional or physical damage to the child and reliable
21 and credible information showing that the agency has made active efforts to prevent
22 the breakup of the Indian family and that those efforts have proved unsuccessful.

under s. 48.028 (4)(e) 2.

1 **SECTION 129.** 48.42 (2) (c) of the statutes is amended to read:

2 48.42 (2) (c) The guardian, guardian ad litem ~~and~~, legal custodian, and Indian
3 custodian of the child. 48.028 (4)(a)

4 **SECTION 130.** 48.42 (2g) (ag) of the statutes is created to read:

5 48.42 (2g) (ag) If the petitioner knows or has reason to know that the child is
6 an Indian child, the petitioner shall cause the summons and petition to be served on
7 the Indian child's parent and Indian custodian in the manner specified in s. 48.273

8 (1) (ag). In like manner, the petitioner shall also notify the Indian child's tribe of all
9 hearings on the petition. The first notice to an Indian child's tribe shall be written,
10 shall have a copy of the petition attached to it, and shall state the nature, location,
11 date, and time of the initial hearing. No hearing may be held on the petition until
12 at least 10 days after receipt of notice of the hearing by the Indian child's parent,
13 Indian custodian, and tribe. On request of the Indian child's parent, Indian
14 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
15 to enable the requester to prepare for the hearing.

16 Pf **SECTION 131.** 48.42 (4) (a) of the statutes, as affected by 2005 Wisconsin Act
17 293 is amended to read:

18 48.42 (4) (a) *Personal service.* Except as provided in this paragraph ~~and~~, par.
19 (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally
20 upon the parties specified in sub. (2), if known, at least 7 days before the date of the
21 hearing. Service of summons is not required if the party submits to the jurisdiction
22 of the court. Service upon parties who are not natural persons and upon persons
23 under a disability shall be as prescribed in s. 801.11. ✓

24 **SECTION 132.** 48.422 (1) of the statutes is amended to read:

1 48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the
2 petition to terminate parental rights shall be held within 30 days after the petition
3 is filed. At the hearing on the petition to terminate parental rights the court shall
4 determine whether any party wishes to contest the petition and inform the parties
5 of their rights under sub. (4) and s. 48.423.

6 **SECTION 133.** 48.422 (2) of the statutes is amended to read:

7 48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested
8 the court shall set a date for a fact-finding hearing to be held within 45 days of after
9 the hearing on the petition, unless all of the necessary parties agree to commence
10 with the hearing on the merits immediately.

11 *PWT* **SECTION 134.** 48.422 (6) (a) of the statutes ~~as affected by 2005 Wisconsin Act~~

12 ~~293~~ is amended to read:

13 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
14 parents do not subsequently intermarry under s. 767.60 and for whom paternity has
15 not been established, or for whom a declaration of paternal interest has not been filed
16 under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42 (1g)
17 (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g) (b)
18 is mailed, the court shall hear testimony concerning the paternity of the child. Based
19 on the testimony, the court shall determine whether all interested parties who are
20 known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall
21 adjourn the hearing and order appropriate notice to be given.

22 **SECTION 135.** 48.423 (1) of the statutes ~~as affected by 2005 Wisconsin Act 293~~

23 is amended to read:

24 **48.423 (1) RIGHTS TO PATERNITY DETERMINATION.** If a person appears at the
25 hearing and claims that he is the father of the child, the court shall set a date for a

1 hearing on the issue of paternity or, if, If the child is an Indian child or if it appears
2 to the court that the determination of paternity may result in a finding that the child
3 is an Indian child, the court shall cause notice of the hearing on the issue of paternity
4 to be provided to the Indian child's parent, Indian custodian, and tribe under s. 48.42
5 (2g) (ag), and the hearing may not be held until at least 10 days after receipt of notice
6 under s. 48.42 (2g) (ag) by the Indian child's parent, Indian custodian, and tribe. On
7 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
8 a continuance of up to 20 additional days to enable the requester to prepare for the
9 hearing. If all parties agree, the court may immediately commence hearing
10 testimony concerning the issue of paternity. The court shall inform the person
11 claiming to be the father of the child of any right to counsel under s. 48.23. The person
12 claiming to be the father of the child must prove paternity by clear and convincing
13 evidence. A person who establishes his paternity of the child under this section may
14 further participate in the termination of parental rights proceeding only if the person
15 meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2)
16 or (b) or (bm).

17 SECTION 136. 48.424 (1) of the statutes is amended to read:

18 48.424 (1) The purpose of the fact-finding hearing is to determine whether
19 ~~grounds exist for the termination of parental rights in those cases where the~~
20 ~~termination in cases in which the petition was contested at the hearing on the~~
21 ~~petition under s. 48.422 whether grounds exist for termination of parental rights~~
22 ~~and, in contested cases in which the child is an Indian child, to determine whether~~
23 ~~grounds exist for termination of parental rights and whether the allegations~~
24 ~~specified in s. 48.42 (1) (a) are proved.~~

25 SECTION 137. 48.424 (2) (intro.) of the statutes is amended to read:

1 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the
2 procedure specified in s. 48.31 except ~~that~~ as follows:

3 **SECTION 138.** 48.424 (2) (a) of the statutes is amended to read:

4 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

5 **SECTION 139.** 48.424 (3) of the statutes is amended to read:

6 48.424 (3) If the facts are determined by a jury, the jury may only decide
7 whether any grounds for the termination of parental rights have been ~~proven~~ proved
8 and, in the case of an Indian child, whether the allegations specified in s. 48.42 (1)
9 (e) have been proved. The court shall decide what disposition is in the best interest
10 of the child.

NOTE: In the DHFS draft likelihood of serious harm is listed in the standards and factors in s. 48.426 relating to disposition. It appears, however, that likelihood of serious harm would be based on the facts, i.e., present conduct predicts future behavior, and goes to the issue of unfitness, which is determined at the fact-finding, not dispositional, stage.

11 **SECTION 140.** 48.424 (4) (intro.) of the statutes is amended to read:

12 48.424 (4) (intro.) If grounds for the termination of parental rights are found
13 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
14 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
15 immediately to hear evidence and motions related to the dispositions enumerated in
16 s. 48.427. ~~The~~ Except as provided in s. 48.42 (2g) (ag), the court may delay making
17 the disposition and set a date for a dispositional hearing no later than 45 days after
18 the fact-finding hearing if any of the following apply:

19 **SECTION 141.** 48.424 (4) (a) of the statutes is amended to read:

20 48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

21 **SECTION 142.** 48.424 (5) of the statutes is amended to read:

22 48.424 (5) If the court delays making a permanent disposition under sub. (4),
23 it may transfer temporary custody of the child to an agency for placement of the child

48.028 (7)(b)

1 until the dispositional hearing. Placement of an Indian child under this subsection
 2 shall comply with the order of placement preference under s. ~~48.345 (3)~~.

3 **SECTION 143.** 48.425 (1) (cm) of the statutes is created to read:

4 48.425 (1) (cm) If the child is an Indian child, specific information showing that
 5 continued custody of the child by the parent or Indian custodian is likely to result in
 6 serious emotional or physical damage to the child under 6. 48.028 (4)(e) 1. and, if the Indian child has
 7 previously been adjudged to be in need of protection or services, specific information
 8 showing that the agency or person responsible for providing services to the Indian
 9 child and his or her family has made active efforts under 5. 48.028 (4)(e) 2. to prevent the breakup of the
 10 Indian family and that those efforts have proved unsuccessful.

11 **SECTION 144.** 48.427 (5) of the statutes is created to read:

12 48.427 (5) (cm) In placing an Indian child in a preadoptive placement following
 13 a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian
 14 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)

15 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. ~~48.345~~

16 (3m). 48.028 (7)(b)

17 **SECTION 145.** 48.428 (2) (a) of the statutes ~~as affected by 2005 Wisconsin Act~~

18 282 is amended to read:

19 48.428 (2) (a) Except as provided in par. (b), when a court places a child in
 20 sustaining care after an order under s. 48.427 (4), the court shall transfer legal
 21 custody of the child to the county department, ~~the department~~ ^{ok Striken} in a county having a
 22 population of 500,000 or more, or a licensed child welfare agency, transfer
 23 guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and
 24 place the child in the home of a licensed foster parent, licensed treatment foster
 25 parent, or kinship care relative with whom the child has resided for 6 months or

48.028 (7)(b)

1 longer. In placing an Indian child in sustaining care, the court shall comply with the
2 order of placement preference under s. ~~48.345 (3m)~~. Pursuant to such a placement,
3 this that licensed foster parent, licensed treatment foster parent, or kinship care
4 relative shall be a sustaining parent with the powers and duties specified in sub. (3).

5 **SECTION 146.** 48.428 (2) (b) of the statutes, as affected by 2005 Wisconsin Act
6 232, is amended to read:

7 48.428 (2) (b) When a court places a child in sustaining care after an order
8 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
9 under s. 48.977 (2), the court may transfer legal custody of the child to the county
10 department, the department, in a county having a population of 500,000 or more, or
11 a licensed child welfare agency, transfer guardianship of the child to an agency listed
12 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
13 parent, licensed treatment foster parent, or kinship care relative with whom the
14 child has resided for 6 months or longer. In placing an Indian child in sustaining
15 care, the court shall comply with the order of placement preference under s. ~~48.345~~

16 (3m). Pursuant to such a placement, that licensed foster parent, licensed treatment
17 foster parent, or kinship care relative shall be a sustaining parent with the powers
18 and duties specified in sub. (3). If the court transfers guardianship of the child to an
19 agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), the court shall terminate the
20 guardianship under s. 48.977. 48.028 (4)(c.)

21 **SECTION 147.** 48.43 (5) (bm) of the statutes is created to read:

22 48.43 (5) (bm) If the child is an Indian child, the court shall also provide notice
23 of the hearing under par. (b) to the Indian child's tribe in the manner specified in s.
24 48.273 (1) (a). No hearing may be held under par. (b) until at least 10 days after
25 receipt of notice of the hearing by the Indian child's tribe. On request of the Indian

1 child's tribe, the court shall grant a continuance of up to 20 additional days to enable
2 the tribe to prepare for the hearing.

3 **SECTION 148.** 48.43 (5) (c) of the statutes ~~as affected by 2005 Wisconsin Act 232~~
4 is amended to read:

5 48.43 (5) (c) Following the hearing, the court shall make all of the
6 determinations specified under s. 48.38 (5) (c), except the determinations relating to
7 the child's parents. The court may amend the order under sub. (1) to transfer the
8 child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1.
9 to 4. or (am) that consents to the transfer, if the court determines that the transfer
10 is in the child's best interest. If an Indian child's guardianship and custody are
11 transferred under this paragraph, the agency consenting to the transfer shall comply
12 with the order of placement preference specified in s. ~~48.345 (3m)~~ in placing the child.

13 If an order is amended, the agency that prepared the permanency plan shall revise
14 the plan to conform to the order and shall file a copy of the revised plan with the court.
15 Each plan filed under this paragraph shall be made a part of the court order.

16 **SECTION 149.** 48.43 (5m) of the statutes is amended to read:

17 48.43 (5m) Either the court or the agency that prepared the permanency plan
18 shall furnish a copy of the original plan and each revised plan to the child, if he or
19 she is 12 years of age or over, ~~and~~ to the child's foster parent, the child's treatment
20 foster parent, or the operator of the facility in which the child is living, and, if the
21 child is an Indian child, to the Indian child's tribe.

22 **SECTION 150.** 48.43 (6) (a) of the statutes ~~as affected by 2005 Wisconsin Act~~
23 293 is amended to read:

24 48.43 (6) (a) Judgments under this subchapter terminating parental rights are
25 final and are appealable under s. 808.03 (1) according to the procedure specified in

48.028 (5)(c) and (6)

s. 809.107 and are subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.47 (1) and (2). The attorney representing a person during a proceeding under this subchapter shall continue representation of that person by filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been previously discharged during the proceeding by the person or by the trial court.

SECTION 151. 48.43 (6) (c) of the statutes, ~~as created by 2005 Wisconsin Act 293,~~ (5)(c) and (6) is amended to read: 48.028 (5)(c) and (6)

48.43 (6) (c) ~~In~~ Except as provided in s. 48.47 (1) or (2), in no event may any person, for any reason, collaterally attack a judgment terminating parental rights more than one year after the date on which the time limit for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided, whichever is later.

SECTION 152. 48.46 (2) of the statutes is amended to read:

48.46 (2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. Motions under this subsection or s. 48.47 (1) or (2) and

48.028 (5)(c) or (6)

1 appeals to the court of appeals shall be the exclusive remedies for such a parent to
2 obtain a new hearing in a termination of parental rights proceeding.

3 ~~SECTION 153. 48.47 of the statutes is created to read:~~

4 **48.47 Indian child; invalidation of action; withdrawal of consent;**
5 **return of custody. (1) INVALIDATION OF ACTION.** Any Indian child who is the subject
6 of an out-of-home care placement or of a termination of parental rights proceeding,
7 any parent or Indian custodian of that Indian child, or the Indian child's tribe may
8 move the court to invalidate that out-of-home care placement or termination of
9 parental rights on the grounds that the out-of-home care placement was made or
10 the termination of parental rights was ordered in violation of 25 USC 1911, 1912, or
11 1913. If the court finds that those grounds exist and if the Indian child has not been
12 adopted, the court shall invalidate the out-of-home care placement or termination
13 of parental rights and order the Indian child to be returned to his or her parent or
14 Indian custodian. If the Indian child has been adopted, the parent or Indian
15 custodian may petition the court under sub. (3) for return of custody of the Indian
16 child.

17 **(2) WITHDRAWAL OF CONSENT TO TERMINATION OF PARENTAL RIGHTS.** After the entry
18 of a final judgment terminating parental rights to an Indian child, a parent who has
19 consented to that termination under s. 48.41 (2) (e) or who did not contest the petition
20 initiating the proceeding in which his or her parental rights were terminated may
21 withdraw that consent and move the court for relief from the judgment on the
22 grounds that the consent was obtained through fraud, misrepresentation, or duress.
23 Any such motion shall be filed within 2 years after the entry of an order granting
24 adoption of the Indian child. A motion under this subsection does not affect the
25 ~~finality or suspend the operation of the judgment or order terminating parental~~

rights or granting adoption. If the court finds that the consent was obtained through fraud, misrepresentation, or duress, the court shall vacate the judgment or order terminating parental rights and, if applicable, the order granting adoption.

NOTE: Current s. 48.46 (2) permits relief from a voluntary or uncontested TPR on various grounds specified in s. 806.07 (1) (a), (b), (c), (d), or (f), which include fraud, misrepresentation, or duress, but which also include mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence; a void judgment; vacation of a prior judgment; or other misconduct. For the sake of consistency do you want to broaden s. 48.47 (2) to reference all of those grounds or should we stick with the grounds set forth in ICWA?

Also, please note that this draft permits not only a parent who has voluntarily consented to a TPR but also a parent who did not contest an involuntary TPR petition to move for relief from the judgment.

(3) RETURN OF CUSTODY. (a) In this subsection:

1. "Former Indian custodian" means a person who was the Indian custodian of an Indian child before termination of parental rights to and adoption of the Indian child.

2. "Former parent" means a person who was the parent of an Indian child before termination of parental rights to and adoption of the Indian child.

(b) If a final order granting adoption of an Indian child is vacated or set aside or if the parental rights to an Indian child of all adoptive parents of the Indian child are voluntarily terminated, the court that vacated or set aside the final decree of adoption or that ordered the termination of parental rights of the adoptive parents shall notify the Indian child's former parent and former Indian custodian and the former parent or former Indian custodian may petition for the return of custody of the Indian child.

(c) On receipt of a petition under par. (b), the court shall set a date for a hearing on the petition that allows reasonable time for the parties to prepare. The court shall provide notice of the hearing to the guardian and legal custodian of the Indian child and to all other interested parties as provided in s. 48.27 (6) and to the Indian child's

former parent, former Indian custodian, and tribe in the manner specified in s. 48.273 (1) (ag). The hearing on the petition may not be held until at least 10 days after receipt of the notice of the hearing by the Indian child's former parent, former Indian custodian, and tribe. On request of the Indian child's former parent, former Indian custodian, or tribe the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(d) At the conclusion of the hearing, the court shall grant a petition for the return of custody of the Indian child to the Indian child's former parent or former Indian custodian unless there is a showing of good cause that return of custody is not in the best interest of the Indian child.

SECTION 154. 48.48 (8m) of the statutes is amended to read:

48.48 (8m) To enter into agreements with American Indian tribes in this state to implement the Indian child welfare act federal Indian Child Welfare Act, 25 USC 1911 to 1963.

SECTION 155. 48.485 of the statutes as affected by 2005 Wisconsin Act 296 is amended to read:

48.485 Transfer of tribal Indian children to department for adoption.

If the department accepts guardianship or legal custody or both from an American Indian a tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive placement for the child. If a permanent adoptive placement is not in progress within 2 years after entry of the termination of parental rights order by the tribal court, the department may petition the tribal court to transfer legal custody or guardianship of the Indian child back to the Indian tribe, except that the department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe

1 legal custody or guardianship of a an Indian child who was initially taken into
2 custody under s. 48.195 (1).

3 **SECTION 156.** 48.63 (1) of the statutes is amended to read:

4 48.63 (1) Acting under court order or voluntary agreement, the child's parent
5 ~~or~~, guardian, or Indian custodian, the department of health and family services, the
6 department of corrections, a county department, or a child welfare agency licensed
7 to place children in foster homes, treatment foster homes, or group homes may place
8 a child or negotiate or act as intermediary for the placement of a child in a foster
9 home, treatment foster home, or group home. Voluntary agreements under this
10 subsection may not be used for placements in facilities other than foster, treatment
11 foster, or group homes and may not be extended. A foster home or treatment foster
12 home placement under a voluntary agreement may not exceed 180 days from the
13 date on which the child was removed from the home under the voluntary agreement.
14 A group home placement under a voluntary agreement may not exceed 15 days from
15 the date on which the child was removed from the home under the voluntary
16 agreement, except as provided in sub. (5). These time limitations do not apply to
17 placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary
18 agreements may be made only under this subsection and sub. (5) (b) and shall be in
19 writing and shall specifically state that the agreement may be terminated at any
20 time by the parent ~~or~~, guardian, or Indian custodian or by the child if the child's
(21) consent to the agreement is required. ~~The child's consent to the agreement is~~
22 required whenever the child is 12 years of age or older. to the placement

~~NOTE: The DHFS draft incorporates into s. 48.63 the provisions of 25 USC 1913 relating to voluntary foster care placements. ICWA, however, does not apply to voluntary placements under s. 48.63 because those placements may be terminated at any time whereas ICWA only applies to placements in which the parent or Indian custodian cannot have the child returned upon demand. See 25 USC 1903 (1) (i). Accordingly, this draft~~

In the case of an Indian child who is placed under this subsection by the voluntary agreement of the Indian child's parent or Indian custodian, the voluntary consent of the parent or Indian custodian shall be given as provided in s. 48.228 (5) (a).

~~simply permits an Indian custodian to place an Indian child in voluntary out-of-home care and to terminate the placement at any time.~~

SECTION 157. 48.63 (4) of the statutes is amended to read:

48.63 (4) A permanency plan under s. 48.38 is required for each child placed in a foster home or treatment foster home under sub. (1). If the child is living in a foster home or treatment foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over ~~and~~, to the child's parent or guardian, and, if the child is an Indian child, to the Indian child's Indian custodian and tribe. If the agency that arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

SECTION 158. 48.63 (5) (b) of the statutes is amended to read:

48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent ~~or~~, guardian, or Indian custodian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625 (1m). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report any suspected abuse or neglect of the child as required under s. 48.981 (2). A voluntary agreement to place a child in a group home described in s. 48.625 (1m) may be made only under this paragraph,

~~In the case of an Indian child who is placed in a group home under
this paragraph by the voluntary agreement of the Indian
child's parent or Indian custodian, the voluntary consent
of the parent or Indian custodian to the placement shall be given as
provided in s. 48.328 (5)(a).~~

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1 shall be in writing, and shall specifically state that the agreement may be terminated
2 at any time by the parent, guardian, Indian custodian, or child. An initial placement
3 under this paragraph may not exceed 180 days from the date on which the child was
4 removed from the home under the voluntary agreement, but may be extended as
5 provided in par. (d) 3. to 6. An initial placement under this paragraph of a child who
6 is under 16 years of age on the date of the initial placement may be extended as
7 provided in par. (d) 3. to 6. no more than once.

8 **SECTION 159.** 48.63 (5) (c) of the statutes is amended to read:

9 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed
10 in a group home under par. (b) and for any child of that child who is residing with that
11 child. The agency that placed the child or that arranged the placement of the child
12 shall prepare the plan within 60 days after the date on which the child was removed
13 from his or her home under the voluntary agreement and shall provide a copy of the
14 plan to the child ~~and~~ the child's parent or guardian, and, if the child is an Indian
15 child, the Indian child's Indian custodian and tribe.

16 **SECTION 160.** 48.63 (5) (d) 3. of the statutes is amended to read:

17 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has
18 arranged the placement of the child wishes to extend the placement of the child, the
19 agency shall prepare a revised permanency plan for that child and for any child of
20 that child who is residing with that child and submit the revised permanency plan
21 or plans, together with a request for a review of the revised permanency plan or plans
22 and the child's placement, to the independent reviewing agency before the expiration
23 of the child's placement. The request shall include a statement that an extension of
24 the child's placement would be in the best interests of the child, together with reliable
25 and credible information in support of that statement, a statement that the child and

1 the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension of
2 the child's placement, and a request that the independent reviewing agency approve
3 an extension of the child's placement. On receipt of a revised permanency plan or
4 plans and a request for review, the independent reviewing agency shall set a time and
5 place for the review and shall advise the agency that placed the child or that arranged
6 the placement of the child of the time and place of the review.

7 **SECTION 161.** 48.63 (5) (d) 4. of the statutes is amended to read:

8 48.63 (5) (d) 4. Not less than 10 days before the review, the agency that placed
9 the child or that arranged the placement of the child shall provide a copy of the
10 revised permanency plan or plans and the request for review submitted under subd.
11 3. and notice of the time and place of the review to the child, the parent, guardian,
12 and legal custodian of the child, ~~and the operator of the group home in which the child~~
13 ~~is placed, and, if the child is an Indian child, the Indian child's Indian custodian and~~
14 ~~tribe~~, together with notice of the issues to be determined as part of the permanency
15 plan review and notice of the fact that those persons may have the opportunity to be
16 heard at the review by submitting written comments to that agency or the
17 independent reviewing agency before the review or by participating at the review.

18 **SECTION 162.** 48.63 (5) (d) 5. of the statutes is amended to read:

19 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present
20 information relevant to the issue of extension and information relevant to the
21 determinations specified in s. 48.38 (5) (c). After receiving that information, the
22 independent reviewing agency shall make the determinations specified in s. 48.38
23 (5) (c) and determine whether an extension of the child's placement is in the best
24 interests of the child and whether the child and the parent ~~or~~, guardian, or Indian
25 custodian of the child consent to the extension. If the independent reviewing agency

1 determines that the extension is in the best interests of the child and that the child
2 and the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension,
3 the independent reviewing agency shall approve, in writing, an extension of the
4 placement for a specified period of time not to exceed 6 months, stating the reason
5 for the approval, and the agency that placed the child or that arranged the placement
6 of the child may extend the child's placement for the period of time approved. If the
7 independent reviewing agency determines that the extension is not in the best
8 interests of the child or that the child and the parent ~~or~~, guardian, or Indian
9 custodian of the child do not consent to the extension, the independent reviewing
10 agency shall, in writing, disapprove an extension of the placement, stating the
11 reason for the disapproval, and the agency that placed the child or that arranged the
12 placement of the child may not extend the placement of the child past the expiration
13 date of the voluntary placement unless the agency obtains a court order placing the
14 child in the group home after the expiration date of the voluntary placement.
15 Notwithstanding the approval of an extension under this subdivision, the child or the
16 parent ~~or~~, guardian, or Indian custodian of the child may terminate the placement
17 at any time during the extension period.

18 **SECTION 163.** 48.63 (5) (d) 6. of the statutes is amended to read:

19 48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the
20 revised permanency plan or plans shall prepare a written summary of the
21 determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall
22 provide a copy of that summary to the independent reviewing agency, the child, the
23 parent, guardian, and legal custodian of the child, ~~and the operator of the group home~~
24 ~~in which the child was placed, and, if the child is an Indian child, the Indian child's~~
25 Indian custodian and tribe.

48.028 (3)(a)

SECTION 164. 48.83 (1) of the statutes is amended to read:

48.83 (1) The Except as provided in s. ~~48.155 (1)~~ the court of the county where the proposed adoptive parent or child resides, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied, or granted. Venue shall be in the county where the proposed adoptive parent or child resides at the time the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.

SECTION 165. 48.831 (1r) of the statutes is created to read:

48.831 (1r) NOTICE. When a petition is filed under sub. (1m), the court shall provide notice of the fact-finding hearing under sub. (3) to all interested parties as provided in s. 48.27 (6). If the court knows or has reason to know that the child is an Indian child, the court shall provide notice to the Indian child's Indian custodian, if any, and tribe, if known, in the manner specified in s. ~~48.273 (1) (a)~~. No hearing may be held under sub. (3) until at least 10 days after receipt of the notice by the Indian child's Indian custodian and tribe. On request of the Indian child's Indian custodian or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

SECTION 166. 48.831 (4) (cm) of the statutes is created to read:

48.831 (4) (cm) If the child is an Indian child who is in the custody of an Indian custodian, the court may not remove the child from the custody of the Indian custodian under par. (c) unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the Indian custodian is likely to result in serious emotional or physical damage to the child and that the department, county

under s. 48.028 (4)(d) b

under s. 48.029 (4)(2)2.

and 2007 Wisconsin Act 23
(this act)

1 department, or child welfare agency has made active efforts to prevent the breakup
 2 of the Indian family and that those efforts have proved unsuccessful. In placing an
 3 Indian child following a transfer of guardianship and custody under par. (b) or (c),
 4 the custodian appointed under par. (b) or (c) shall comply with the order of placement

5 preference under s. ~~48.345 (3m)~~ 48.029 (7)(b)
 6 LPS: Pls chg comp.

7 ~~SECTION 167.~~ 48.833 of the statutes as affected by 2005 Wisconsin Act 23, is
 8 ~~repealed and recast~~ amended to read: Keep

48.833 Placement of children for adoption by the department, county

9 departments, and child welfare agencies. The department, a county
 10 department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under
 11 s. 48.60 may place a child for adoption in a licensed foster home or a licensed
 12 treatment foster home without a court order if the department, county department,
 13 or child welfare agency is the guardian of the child or makes the placement at the
 14 request of another agency that is the guardian of the child and if the proposed
 15 adoptive parents have completed the preadoptive preparation required under s.
 16 48.84 (1) or the department, county department, or child welfare agency determines
 17 that the proposed adoptive parents are not required to complete that preparation.

18 ~~Before placing a child for adoption under this section, the department, county~~
 19 ~~department, or child welfare agency making the placement shall consider the~~
 20 ~~availability of a placement for adoption with a relative of the child who is identified~~
 21 ~~in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known~~

22 ~~by the department, county department, or child welfare agency.~~ In placing an Indian
 23 ~~child for adoption under this section, the department, county department, or child~~
 24 ~~welfare agency shall comply with the order of placement preference under s. 48.834.~~ (plan.)

25 When a child is placed under this section in a licensed foster home or a licensed

48.028 (7)(a)

1 treatment foster home for adoption, the department, county department, or child
2 welfare agency making the placement shall enter into a written agreement with the
3 proposed adoptive parent, which shall state the date on which the child is placed in
4 the licensed foster home or licensed treatment foster home for adoption by the
5 proposed adoptive parent.

6 ~~SECTION 168. 48.834 of the statutes is created to read:~~

7 **48.834 Placement of Indian children for adoption; placement**
8 **preference.** (1) Subject to subs. (2) to (5), the department, county department
9 under s. 48.57 (1) (e) or (hm), or child welfare agency licensed under s. 48.60, in
10 placing an Indian child for adoption under s. 48.833 or in investigating or making a
11 recommendation regarding the adoptive placement of an Indian child under s.
12 48.837 (4) (c), 48.85 (1), 48.88 (2) (b), or 48.89 (1), and the court, in determining
13 whether an adoptive placement is in the best interests of an Indian child under s.
14 48.837 (6) (c) or 48.91 (3), shall give preference to a placement with one of the
15 following, in the order of preference listed:

16 (a) An extended family member of the Indian child.

17 (b) Another member of the Indian child's tribe.

18 (c) Another Indian family.

19 (2) If the Indian child's tribe has established, by resolution, an order of
20 preference that is different from the order specified in sub. (1), the department,
21 county department, child welfare agency, or court shall follow the order of preference
22 established by that tribe so long as the placement is appropriate for the Indian child's
23 special needs, if any.

24 (3) The department, county department, child welfare agency, or court may
25 depart from the order of preference specified in sub. (1) or (2) for good cause shown.

(4) The standards to be applied in meeting the placement preference requirement of this section shall be the prevailing social and cultural standards of the Indian community in which the Indian child's parents or extended family members reside or with which the Indian child's parents or extended family members maintain social and cultural ties.

SECTION 169. 48.837 (2) (e) of the statutes is created to read:

48.837 (2) (e) If the child is an Indian child, the names and addresses of the Indian child's Indian custodian, if any, and tribe, if known.

SECTION 170. 48.837 (4) (c) of the statutes as affected by 2005 Wisconsin Act 293 is amended to read:

48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested, and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency in place of the court-ordered report required under this paragraph. In reporting its recommendations under this paragraph with respect to an Indian child, the department, a county department, or a child welfare agency shall comply with the order of placement preference under s. 48.837. 48.028 (7) (a)

SECTION 171. 48.837 (4) (d) of the statutes is amended to read:

48.837 (4) (d) May, at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), order the department or a county department under s. 48.57 (1) (e) or (hm) to place the child,

1 pending the hearing on the petition, in any home licensed under s. 48.62 except the
2 home of the proposed adoptive parents or a relative of the proposed adoptive parents.

3 In placing an Indian child under this paragraph, the department or county
4 department shall comply with the order of placement preference under s. ~~48.345~~

5 ~~(30)~~ 48.028 (7)(b)

* 6 SECTION 172. 48.837 (6) (c) of the statutes is amended to read:

7 48.837 (6) (c) After the hearing on the petition under sub. (2), the court shall
8 make findings on the allegations of the petition and the report ordered under sub.
9 (4) (c) and make a conclusion as to whether placement in the home is in the best
10 interest of the child. In determining whether placement of an Indian child in the
11 home is in the best interest of the Indian child, the court shall comply with the order
12 of placement preference under s. ~~48.834~~ 48.028 (7)(a)

13 SECTION 173. 48.85 (1) of the statutes is amended to read:

14 48.85 (1) At least 10 days prior to the hearing, the guardian shall file its
15 recommendation with the court. In making a recommendation under this subsection
16 with respect to an Indian child, the guardian shall comply with the order of
17 placement preference under s. ~~48.834~~ 48.028 (7)(a)

18 SECTION 174. 48.88 (2) (b) of the statutes is amended to read:

19 48.88 (2) (b) The agency making the investigation shall file its report with the
20 court at least 10 days before the hearing unless the time is reduced for good cause
21 shown by the petitioner. In reporting on an investigation of the proposed adoptive
22 home of an Indian child, the agency shall comply with the order of placement
23 preference under s. ~~48.834~~ The report shall be part of the record of the proceedings.

24 SECTION 175. 48.89 (1) of the statutes is amended to read:

48.028 (7)(a)

(not true)
48.028 (7) (a)

1 48.89 (1) The recommendation of the department is required for the adoption
2 of a child if the child is not under the guardianship of a county department under s.
3 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a
4 recommendation under this subsection with respect to an Indian child, the
5 department shall comply with the order of placement preference under s. ~~48.831~~.

6 **SECTION 176.** 48.91 (3) of the statutes is amended to read:

7 48.91 (3) If after the hearing and a study of the report required by s. 48.88 and
8 the recommendation required by s. 48.841 or 48.89, the court is satisfied that the
9 necessary consents or recommendations have been filed and that the adoption is in
10 the best interests of the child, the court shall make an order granting the adoption.
11 In determining whether the adoption is in the best interests of an Indian child, the
12 court shall comply with the order of placement preference under s. ~~48.831~~. The order
13 may change the name of the minor to that requested by petitioners.

14 **SECTION 177.** 48.93 (1d) of the statutes is amended to read:

15 48.93 (1d) All records and papers pertaining to an adoption proceeding shall
16 be kept in a separate locked file and may not be disclosed except under sub. (1g) or,
17 (1r), or (1v), s. 46.03 (29), 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or
18 by order of the court for good cause shown.

19 **SECTION 178.** 48.93 (1v) of the statutes is created to read:

20 48.93 (1v) (a) At the time a court enters an order granting adoption of an Indian
21 child, the court shall provide the U.S. secretary of the interior with a copy of the order,
22 ~~together with such other records and papers pertaining to the adoption proceeding~~
23 ~~as may be necessary to provide that secretary with all of the following information:~~
24 1. The name and tribal affiliation of the Indian child.
25 2. The names and addresses of the Indian child's birth parents.

the information specified in s. 48.028 (9)(a) and (b)

SECTION 178

3. The names and addresses of the Indian child's adoptive parents.

4. The identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child.

(b) At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of the adoptee shall provide the adoptee with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

NOTE: Section 48.93 (1v) (a) codifies 25 USC 1951 (a) and s. 48.93 (1v) (b) codifies 25 USC 1917.

under s. 48.028 (4) (2) 1.

under s. 48.028 (4) (2) 2.

SECTION 179. 48.977 (2) (g) of the statutes is created to read:

48.977 (2) (g) In the case of an Indian child, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that the agency primarily responsible for providing services to the Indian child under a court order has made active efforts to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

SECTION 180. 48.977 (4) (a) 1. of the statutes is amended to read:

48.977 (4) (a) 1. The child or the child's guardian or, legal custodian, or Indian custodian.

SECTION 181. 48.977 (4) (b) 6. of the statutes is amended to read:

48.977 (4) (b) 6. A statement of whether the child may be subject to the federal Indian child welfare act Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known.

under s. 48.028 (4)(d) 1.
s. 48.028 (4)(d) 1.

under s. 48.028 (4)(d) 2.

1 SECTION 182. 48.977 (4) (b) 7. of the statutes is created to read:

2 48.977 (4) (b) 7. If the child is or may be an Indian child, reliable and credible
3 information showing that continued custody of the child by the child's parent or
4 Indian custodian is likely to result in serious emotional or physical damage to the
5 child, and reliable and credible information showing that the person who took the
6 child into custody and the intake worker have made active efforts to prevent the
7 breakup of the Indian family and that those efforts have proved unsuccessful.

8 SECTION 183. 48.977 (4) (c) 1. j. of the statutes is created to read:

9 48.977 (4) (c) 1. j. If the child is an Indian child, the Indian child's Indian
10 custodian, if any, and tribe, if known.

11 SECTION 184. 48.977 (4) (c) 2. of the statutes is amended to read:

12 48.977 (4) (c) 2. Service Except as provided in subd. 2m., service shall be made
13 by 1st class mail at least 7 days before the hearing or by personal service at least 7
14 days before the hearing or, if with reasonable diligence a party specified in subd. 1.
15 cannot be served by mail or personal service, service shall be made by publication of
16 a notice published as a class 1 notice under ch. 985. In determining which newspaper
17 is likely to give notice as required under s. 985.02 (1), the petitioner shall consider
18 the residence of the party, if known, or the residence of the relatives of the party, if
19 known, or the last-known location of the party.

20 SECTION 185. 48.977 (4) (c) 2m. of the statutes is created to read:

21 48.977 (4) (c) 2m. If the petitioner knows or has reason to know that the child
22 is an Indian child, service under subd. 2. to the Indian child's parent shall be provided
23 in the manner specified in s. ~~48.273 (1) (a)~~. In like manner, the petitioner shall also
24 provide service to the Indian child's Indian custodian and tribe. No hearing may be
25 held under par. (cm) until at least 10 days after receipt of service by the Indian child's

parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

SECTION 186. 48.977 (4) (d) of the statutes is amended to read:

48.977 (4) (d) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) (g) have been met. If the court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) (g) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact-finding hearing.

SECTION 187. 48.977 (4) (g) 4. of the statutes is created to read:

48.977 (4) (g) 4. If the child is an Indian child, the order of placement preference under s. ~~48.345 (3-4)~~ 48.928 (7)(b).

SECTION 188. 48.978 (2) (b) 11. of the statutes is amended to read:

48.978 (2) (b) 11. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known.

SECTION 189. 48.981 (1) (cs) of the statutes is repealed.

SECTION 190. 48.981 (1) (i) of the statutes is amended to read:

48.981 (1) (i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings

1 under the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901
2 to 1963.

3 **SECTION 191.** 48.981 (3) (bm) (intro.) of the statutes is amended to read:

4 48.981 (3) (bm) *Notice of report to Indian tribal agent.* (intro.) In a county
5 which has wholly or partially within its boundaries a ~~federally recognized Indian~~
6 reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a
7 county department which receives a report under par. (a) pertaining to a child or
8 unborn child knows or has reason to know that the child is an Indian child who
9 resides in the county or that the unborn child is an Indian unborn child whose
10 expectant mother resides in the county, the county department shall provide notice,
11 which shall consist only of the name and address of the child or expectant mother and
12 the fact that a report has been received about that child or unborn child, within 24
13 hours to one of the following:

14 **SECTION 192.** 48.981 (3) (bm) 1. of the statutes is amended to read:

15 48.981 (3) (bm) 1. If the county department knows ~~with which the Indian~~ tribe
16 ~~or band of which~~ the child is affiliated a member, or ~~with which the Indian~~ tribe or
17 band in which the unborn child, when born, may be eligible for affiliation
18 membership, and it is a Wisconsin Indian tribe ~~or band~~, the tribal agent of that tribe
19 ~~or band~~.

20 **SECTION 193.** 48.981 (3) (bm) 2. of the statutes is amended to read:

21 48.981 (3) (bm) 2. If the county department does not know ~~with which the~~
22 Indian tribe ~~or band of which~~ the child is affiliated a member, or ~~with which the~~
23 Indian tribe ~~or band in which~~ the unborn child, when born, may be eligible for
24 affiliation membership, or the child or expectant mother is not ~~affiliated with a~~

1 member of a Wisconsin Indian tribe or band, the tribal agent serving the reservation
2 or Ho-Chunk service area where the child or expectant mother resides.

3 **SECTION 194.** 48.981 (7) (a) 10m. of the statutes is amended to read:

4 48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a
5 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
6 jurisdiction over children and unborn children alleged to be in need of protection or
7 services for use in proceedings in which abuse or neglect of the child who is the
8 subject of the report or record or abuse of the unborn child who is the subject of the
9 report or record is an issue.

10 **SECTION 195.** 48.981 (7) (a) 10r. of the statutes is amended to read:

11 48.981 (7) (a) 10r. A tribal court, or other adjudicative body authorized by a
12 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
13 jurisdiction over children alleged to be in need of protection or services for use in
14 proceedings in which an issue is the substantial risk of abuse or neglect of a child
15 who, during the time period covered by the report or record, was in the home of the
16 child who is the subject of the report or record.

17 **SECTION 196.** 48.981 (7) (a) 11m. of the statutes is amended to read:

18 48.981 (7) (a) 11m. An attorney representing the interests of an Indian tribe
19 ~~or band~~ in proceedings under subd. 10m. or 10r., of an Indian child in proceedings
20 under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd.
21 10m.

22 **SECTION 197.** 822.015 of the statutes is amended to read:

23 **822.015 Custody of Indian children.** The Indian child welfare act federal
24 Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes ~~the provisions of this~~
25 chapter in any child custody proceeding governed by that act, except that in any case

1 in which this chapter provides a higher standard of protection for the rights of an
2 Indian child's parent or Indian custodian than the rights provided under that act, the
3 court shall apply the standard under this chapter.

4 **SECTION 198.** 938.01 (3) of the statutes is created to read:

5 938.01 (3) In Indian juvenile custody proceedings, the best interests of the
6 Indian juvenile shall be determined consistent with the federal Indian Child Welfare
7 Act, 25 USC 1901 to 1963. It is the policy of this state to do all of the following:

8 (a) Cooperate fully with Indian tribes in order to ensure that the federal Indian
9 Child Welfare Act is enforced in this state.

10 (b) Protect the best interests of Indian juveniles and to promote the stability
11 and security of Indian tribes and families by the establishment of minimum
12 standards for the removal of Indian juveniles from their families and the placement
13 of those juveniles in foster or adoptive homes that will reflect the unique value of
14 Indian culture.

NOTE: The creation of s. 938.01 (3) includes the declaration of policy found in 25
USC 1902 and 43-1502, Nebraska statutes.

15 **SECTION 199.** 938.02 (5k) of the statutes is created to read:

16 938.02 (5k) "Extended family member," with respect to an Indian juvenile,
17 means a person who is defined as a member of an Indian juvenile's extended family
18 by the law or custom of the Indian juvenile's tribe or, in the absence of such a law or
19 custom, a person who has attained the age of 18 years and who is the Indian juvenile's
20 grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
21 nephew, first cousin, 2nd cousin, or stepparent.

22 **SECTION 200.** 938.02 (8d) of the statutes is created to read:

1 938.02 **(8d)** “Indian” means any person who is a member of an Indian tribe or
2 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
3 1606.

4 **SECTION 201.** 938.02 (8g) of the statutes is created to read:

5 938.02 **(8g)** “Indian juvenile” means an unmarried person who is under 18
6 years of age and who is one of the following:

7 (a) A member of an Indian tribe.

8 (b) Eligible for membership in an Indian tribe and is the biological child of a
9 member of an Indian tribe.

10 ~~**SECTION 202.** 938.02 (8j) of the statutes is created to read:~~

11 ~~938.02 **(8j)** “Indian juvenile custody proceeding” means a proceeding under s.~~
12 ~~938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act,~~
13 ~~25 USC 1901 to 1963, in which an out-of-home care placement may occur, which~~
14 ~~means the removal of an Indian juvenile from his or her parent or Indian custodian~~
15 ~~for temporary placement in a foster home, treatment foster home, group home, or~~
16 ~~residential care center for children and youth or in the home of a guardian, from~~
17 ~~which placement the parent or Indian custodian cannot have the juvenile returned~~
18 ~~upon demand.~~

19 **SECTION 203.** 938.02 (8m) of the statutes is created to read:

20 938.02 **(8m)** “Indian juvenile’s tribe” means one of the following:

21 (a) The Indian tribe in which an Indian juvenile is a member or eligible for
22 membership.

23 (b) In the case of an Indian juvenile who is a member of or eligible for
24 membership in more than one tribe, the Indian tribe with which the Indian juvenile
25 has the more significant contacts.